



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 12, 2017

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2017-23306

Dear Mr. Kopp:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 679787 (COSA File Nos. W179099 and W182270).

The City of San Antonio (the "city") received two requests from the same requestor for a specified incident report and all information pertaining to a specified location. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Additionally, this office has concluded some kinds of medical information are generally highly intimate and embarrassing. *See* Open Records Decision No. 455 (1987). Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well as

the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the submitted information reveals that the requestor knows the identity of the individual involved as well as the nature of the incident in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the individual's common-law right of privacy. However, the requestor appears to be the spouse of the individual whose privacy is at issue and may be acting as her husband's representative. As such the requestor may have a right of access to her husband's private information pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the requestor is acting as the authorized representative of her husband, then she has a right of access to the submitted information pursuant to section 552.023(a), and this information may not be withheld under section 552.101 in conjunction with common-law privacy. In that instance, the city must release the submitted information. However, if the requestor is not acting as the authorized representative of her husband, then the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jahna Ward
Attorney
Open Records Division

JW/tdw

Ref: ID# 679787

Enc. Submitted documents

c: Requestor
(w/o enclosures)